

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs March 18, 2009

STATE OF TENNESSEE v. TROY LYNN WOODLEE

Direct Appeal from the Circuit Court for Warren County
No. F-10853 Larry B. Stanley, Jr., Judge

No. M2008-01100-CCA-R3-CD - Filed January 6, 2010

Defendant, Troy Lynn Woodlee, entered a plea of nolo contendere to one count of felony simple possession of methamphetamine and one count of felony simple possession of marijuana. The trial court sentenced Defendant to two years on each count as a Range I offender. The counts were ordered to be served concurrently for an effective two-year sentence. Defendant attempted to reserve a certified question of law under Rule 37(b)(2)(1) of the Tennessee Rules of Criminal Procedure, challenging the trial court's denial of his motion to suppress the evidence seized after execution of a search warrant. After review, we conclude that this Court does not have jurisdiction to address the certified question because the certified question did not meet the requirements of *State v. Preston*, 759 S.W.2d 647 (Tenn. 1988). The appeal is, therefore, dismissed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Dismissed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Dan Bryant, District Public Defender; and Trenena G. Wilcher, Assistant Public Defender, McMinnville, Tennessee, for the appellant, Troy Lynn Woodlee.

Robert E. Cooper, Jr., Attorney General and Reporter; Mark Fulks, Assistant Attorney General; Lisa Zavogiannis, District Attorney General; and Tom Miner, Assistant District Attorney General, for the appellee, the State of Tennessee.

OPINION

I. Factual Background

On February 22, 2005, Deputy Kevin Murphy of the Warren County Sheriff's Department conducted a "trash pull" at Defendant's residence on Bybee Branch Road. He found two sandwich bags containing a leafy green substance, stems, and seeds that he believed to be marijuana. He also found an empty pack of rolling papers, a cardboard wrapper that said "hemp jewelry kit," and a letter with wording that Deputy Murphy believed to be drug related "stating to someone to bring a quarter (bag of marijuana) to a certain location." Deputy Murphy then obtained a search warrant for Defendant's residence, which was executed on February 25, 2005. During the search, deputies found two-tenths of a gram of methamphetamine and 3.7 grams of marijuana.

On August 4, 2006, Defendant was indicted for one count of felony simple possession of methamphetamine and two counts of felony simple possession of marijuana. Defendant filed a motion to suppress the items seized during the search of his residence, arguing that the affidavit was insufficient to support probable cause for the issuance of the search warrant. More specifically, he argued that the items found in the trash, along with Deputy Murphy's statement in the affidavit that "Troy Lynn Woodlee has told me himself, on prior occasions that he smokes marijuana . . ." were insufficient to establish probable cause. He also argued that the evidence from the trash pull was stale and did not establish a nexus to his apartment. Following a hearing, the trial court denied Defendant's motion to suppress.

Thereafter, on April 18, 2008, Defendant entered into a negotiated plea agreement under Rule 11(e) of the Tennessee Rules of Criminal Procedure, in which he pled nolo contendere to one count of felony simple possession of methamphetamine and one count of felony simple possession of marijuana. The plea was accepted by the trial court.

As part of his plea, Defendant attempted to reserve the right to appeal a certified question of law, dispositive of the case, pursuant to Rule 37(b)(2)(I) of the Tennessee Rules of Criminal Procedure. The respective judgments of conviction forms entered on April 18, 2008, contained the following notation within the special conditions section: "Certified Question of Law reserved for appeal attached hereto as 'Exhibit A' and incorporated herein." "Exhibit A" is presumably a document entitled "Certified Question Reserved for Appeal," which contains the following certified question of law: "Did the Search Warrant and accompanying Affidavit that led to the search of the Defendant's residence violate the United State [sic] and Tennessee Constitutions so as to render all of the evidence seized pursuant thereto, illegal and inadmissible?" The State argues initially on appeal that the question is

not properly before this Court because Defendant has failed to comply with the prerequisites for reserving a certified question of law. We agree.

II. Analysis

Rule 37(b)(2)(I) of the Tennessee Rules of Criminal Procedure provides that a defendant may appeal from any judgment of conviction occurring as a result of a guilty plea if the following requirements are met:

- (A) The judgment of conviction, or other document to which such judgment refers that is filed before the notice of appeal, must contain a statement of the certified question of law reserved by defendant for appellate review;
- (B) The question of law must be stated in the judgment or document so as to identify clearly the scope and limits of the legal issue reserved;
- (C) The judgment or document must reflect that the certified question was expressly reserved with the consent of the state and the trial judge; and
- (D) The judgment or document must reflect that the defendant, the state, and the trial judge are of the opinion that the certified question is dispositive of the case.

See also State v. Armstrong, 126 S.W.3d 908, 912 (Tenn. 2003); *State v. Preston*, 759 S.W.2d 647, 650 (Tenn. 1988).

Additionally, in *Preston*, our supreme court explicitly provided prerequisites to appellate consideration of a certified question of law under Rule 37(b)(2)(I), stating:

[r]egardless of what has appeared in prior petitions, orders, colloquy in open court or otherwise, the final order or judgment from which the time begins to run to pursue a T.R.A.P. 3 appeal must contain a statement of the dispositive certified question of law reserved by defendant for appellate review and the question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved.

Preston, 759 S.W.2d at 650.

Failure to properly reserve a certified question of law pursuant to *Preston* will result in the dismissal of the appeal. *State v. Pendergrass*, 937 S.W.2d 834, 838 (Tenn. 1996). The

burden is on the defendant to see that the prerequisites are in the final order and that the record brought to the appellate court contains all of the proceedings below that bear upon whether the certified question of law is dispositive and the merits of the question certified. *Preston*, 759 S.W.2d at 650.

In *Armstrong*, our supreme court reiterated that strict compliance with *Preston* is required:

[O]ur prior decisions demonstrate that we have never applied a substantial compliance standard to the *Preston* requirements as urged by the defendant in this case. To the contrary, we have described the requirements in *Preston* for appealing a certified question of law under Rule 37 of the Tennessee Rules of Criminal Procedure as “explicit and unambiguous.” Moreover, we agree with the State that a substantial compliance standard would be very difficult to apply in a consistent and uniform manner, and therefore would conflict with the very purpose of *Preston*. We therefore reject the defendant’s argument that substantial compliance with the requirements set forth in *Preston* is all that is necessary in order to appeal a certified question of law.

Armstrong, 121 S.W.3d at 912 (citations omitted).

The issue reserved is whether “the Search Warrant and accompanying Affidavit that led to the search of the Defendant’s residence violate[s] the United State [sic] and Tennessee Constitutions so as to render all of the evidence seized pursuant thereto, illegal and inadmissible . . .” We agree with the State that the certified question is overly broad and not so clearly stated as to identify the scope and limits of the legal issue reserved. Defendant bears the burden of “reserving, articulating, and identifying the issue.” *Pendergrass*, 937 S.W.2d at 838. As the *Pendergrass* court cautioned:

[w]here questions of law involve the validity of searches and the admissibility of statements and confessions, etc., the reasons relied upon by the defendant in the trial court at the suppression hearing must be identified in the statement of the certified question of law and review by the appellate courts will be limited to those passed upon by the trial judge and stated in the certified question, absent a constitutional statement otherwise. Without an explicit statement of the certified question, neither the defendant, the State, nor the trial judge can make a meaningful determination of whether the issue sought to be reviewed is dispositive of the case.

Preston, 759 S.W.2d at 650.

Based on the foregoing, we conclude that Defendant's certified question is overly broad and fails to clearly identify the scope and the limits of the legal issue reserved. Thus, we are without jurisdiction to review the merits of Defendant's claim because he has failed to properly reserve his certified question of law. *See State v. Kale J. Sandusky*, No. M2008-00589-CCA-R3-CD, 2009 WL 537526, at *3 (Tenn. Crim. App., at Nashville, March 4, 2009)(app. denied Aug. 24, 2009); *State v. Nicholas J. Johnson*, No. M2000-03162-CCA-R3-CD, at Nashville, Nov. 6, 2001)(app. denied April 8, 2002). Accordingly, the appeal is dismissed.

CONCLUSION

Because of Defendant's failure to properly frame his certified question of law, this Court is unable to reach the merits of Defendant's claim as this Court has no jurisdiction to entertain this appeal. *See* Tenn. R. Crim. P. 37(b)(2)(I). Accordingly, this appeal is dismissed.

THOMAS T. WOODALL, JUDGE